In the

SUPREME COURT of the UNITED STATES

October Term, 1978

No...78-1409

JEANNE B. WILLIAMS,

Petitioner,

-v.-

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, and JACK ZWICK, and G. ROBERT ROY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JEANNE B. WILLIAMS

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pro se for Petitioner

March 12, 1979

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The petitioner pro se, Jeanne B. Williams, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit entered in this proceeding on September 21, 1978.

Opinion Below

The opinion of the Court of Appeals appears

in the Appendix hereto and is not yet reported. The opinion of the United States District Court for the Southern District of New York appears in the Appendix hereto and is not yet reported.

Jurisdiction

The judgment of the Court of Appeals for the Second Circuit was entered on September 21, 1978. The petition for rehearing was denied on December 14, 1978. This petition for a writ of certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Section 1254 (1).

Questions Presented

Whether Jeanne B. Williams was denied protection of a property interest under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Statutory Provisions Involved

Fourteenth Amendment to the United States Constitution, Section 1

* * * * * * * * *

...nor shall any State deprive any person of life, liberty or property, without due process of law.

Statement of the case

Jeanne B. Williams, a management employee, was dismissed from The Port Authority of New York and New Jersey, hereinafter called the Port Authority, after some nine years of service. Jeanne B. Williams retained a lawyer, attended a post termination interview conducted by a Port Authority representative with her lawyer, at which Port Authority counsel, Mr. Herbert Ouida, was present. At the interview, Jeanne B. Williams indicated that she would give careful consideration to an offer of re-employment.

Some days after the interview, following her lawyer's instruction to contact Mr. Ouida, Jeanne B. Williams was advised by Mr. Ouida that the Port Authority decided to offer her continued employment at the same salary, in a demoted position, with professional counseling. Jeanne B. Williams was advised by Mr. Ouida to contact the Port Authority Personnel Department for more information about the position. Jeanne B. Williams advised her lawyer that she could not accept the offer. Her lawyer advised her to give the offer more thought. Three weeks thereafter, Jeanne B. Williams notified her lawyer, by letter, that she could not accept the Port Authority's offer.

From the time of the post termination interview, on January 20, 1972 until the beginning of March, 1972, Jeanne B. Williams' lawyer and Mr. Ouida communicated.

In 1972, petitioner filed three actions in the United States District Court for the Southern District of New York. In the one numbered 72 Civ 5400, the basis for federal jurisdiction in the court of first instance below, is the Fourteenth Amendment to the United States Constitution and 28 U.S.C., Sections 2201 and 2202, for a declaratory judgment. (The other two actions claimed libel by Jack Zwick and G. Robert Roy, respondents, in an evaluation memorandum written about the petitioner by them.). This petition is concerned with the complaint seeking a declaratory judgment.

In his opinion, Judge Owen did not consider the question raised in this petition. Petioner's appeal to the United States Court of appeal was based, in part on Judge Owen's ommission of that consideration.

By decision dated and judgment entered September 21, 1978, The United States Court of Appeals upheld the decision of Judge Owen and where the due process protection rights of petitioner are concerned, decided that "the only reason appellant never learned the nature of her new job is that she never asked.".

Petitioner requested a rehearing based on evidence presented at the non-jury trial that indicated she sought information concerning the nature of the job from Mr. Ouida.

By decision dated December 14, 1978, the petition for rehearing was denied.

REASON FOR GRANTING THE WRIT

The precise issue is whether an offer of continued employment creates a property interest protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution; and

is Jeanne B. Williams deprived of property absent procedural safeguards to protect it.

Petitioner believes that the offer of continued employment created a property interest protected by the Due Process Clause of the Fourteenth Amendment and that, as part of the dismissal procedure that was followed in her dismissal there should have been procedural safeguards to give her an opportunity to protect this property interest.

Petitioner is unable to cite any precedents to support this belief.

Petitioner was interested enough in continued employment to retain counsel, attend a post termination interview and indicate her interest and further, to contact Port Authority counsel to find out about continued employment.

The offer was part of the termination process, because the termination was not

Respondent the Port Authority might argue that the petitioner was to be continued in employment in a management position and that since management personnel may be dismissed for any reason she would have no claim to a property interest. But, who is to say that this was the case? What was the job that was offered?

There were some 7,000 Port Authority employees at the time of petitioner's dismissal. Of this number only some 20% were management level. On the other hand 80% of their employees hold positions protected by very rigorous disciplinary procedures, requiring formal notice of dismissal and trial-like procedures at hearings for dismissal. Since petition-, in her first five years of Port Authority employment held such positions, in the tolls collection area, there is the

possibility that her demotion might have been to such a position, where there is a property interest.

The offer was part of the termination process , because the termination was not final until February 17, 1972.

Had there been procedural safeguards in connection with the offer, that is, notice advising her of the nature of the continued employment that included a description of the job, as well as the salary, petitioner would have been given a fairer chance to accept the offer.

CONCLUSION

For these reasons a writ of certiorari should issue to review the judgment and opinion of the Second Circuit.

Respectfully submitted,

JEANNE B. WILLIAMS

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Appendices

APPENDICES

Opinion of the Second Circuit

Court of Appeals

UNITED STATES COURT OF APPEALS

For the Second Circuit

No. 91-September Term, 1978

(Argued September 21, 1978

Decided September 21, 1978)

Docket No. 78-7149

Jeanne B. Williams,

Appellant,

-v.-

The Port Authority of New York and New Jersey, and Jack Zwick, and G. Robert Roy,

Appellees.

Before:

Moore, Timbers, and Van Graafeiland,

Circuit Judges.

Appeal from a judgment of the United States District Court for the Southern District of New York, Owen, R., dismissing action by appellant for a declaratory judgment and a writ of mandamus.

Affirmed.

Jeanne B. Williams, New York, New York

pro se for Appellant.

Patrick J.Falvey, General Counsel, The Port Authority of New York and New Jersey, New York, New York (Joseph Lesser, Arthur P.Berg, Philip Maurer, of counsel),

for Appellees.

Timbers, Circuit Judge:

Since the Port Authority's internal regulations permitted managerial employees like appellant to be dismissed for any reason, appellant cannot claim any protectible property right in an expectation of job retention. Bishop v. Wood, 426 U.S. 341 (1976). It follows that her dismissal cannot have been a disproportionate penalty for whatever acts or omissions led to her dismissal.

The Supreme Court has expressly rejected the contention that Fuentes-like safeguards should apply in this area. Arnett v. Kennedy, 416 U.S. 134, 154-55 (1974) (opinion of

Rehnquist, J.). Finally, it appears that the only reason appellant never learned the nature of her new job is that she never asked.

Opinion of Judge Owen of the
United States District Court for the
Southern District of New York

UNITED STATES DISTRICT COURT
for the
SOUTHERN DISTRICT OF NEW YORK

Docket Nos. 72 Civ 5021 and
72 Civ 5136 and 72 Civ 5400
filed November 27, 1972,
December 12, 1972 and
December 22, 1972.

Jeanne B. Williams,
Plaintiff,

-v.-

The Port Authority of New York and New Jersey, and Jack Zwick, and G. Robert Roy,
Defendants.

Jeanne B. Williams,
Plaintiff,

-v.-

The Port Authority of New York and New Jersey,
Defendants.

Jeanne B. Williams,

Plaintiff,

-v.-

The Port Authority of New York and New Jersey,

Defendants.

In 1972, plaintiff Jeanne B. Williams filed three non-jury actions in this Court receiving 1972 Civil Index Nos. 5021, 5136 and 5400.The defendant in each is the Port Authority of New York and New Jersey. In 5021, Messrs. Jack Zwick and G. Robert Roy, officials of the Port Authority are also named as defendants. The actions were consolidated for trial which commenced in April, 1973. At the conclusion of the plaintiff's proof, I reserved decisions on motions to dismiss for failure to state a claim, and recessed the balance of the case pending such determination.

In brief,plaintiff Williams, at the time of the matters alleged in the complaints, was Assistant to the Director, World Trade

Institute in the World Trade Department under the direct supervision of its director, defendant Zwick. Plaintiff had achieved this relatively high position after many years service with the Port Authority.

During the course of approximately one year, while plaintiff was Assistant to the Director,whether deserved or not, Director Zwick apparently became dissatisfied with her performance and,with the assistance of defendant Roy who came in at a roughly coordinate level, wrote a memorandum to the Director of the World Trade Department,Guy Tozzoli, his superior, recommending that plaintiff Williams' employment be terminated.This memorandum is the subject of action No. 5021 in which plaintiff alleges damages for libel. Thereafter, and in or about mid-December 1971, Mr. Tozzoli wrote a memorandum to Austin J.Tobin, the Executive Director,in which Tozzoli recited the essential facts of the Zwick memorandum and

himself recommended that Mrs. Williams be terminated. This second memorandum is the subject of action No. 5136 also alleging damages for libel. Thereafter, having received notice of termination, plaintiff applied for an interview with regard to her termination. This was a review procedure provided by the Authority, and the Director of the Aviation Department presided. Prior to this interview, plaintiff retained an attorney who submitted a lengthy single-spaced letter. Her attorney accompanied her to this interview where she and her lawyer made a full presentation of her case. At the close of the hearing, a position was offered plaintiff at the same salary but doing different work. This was declined. It is alleged in action 5400 that this interview was lacking in due process, and plaintiff seeks restoration to her former position. Plaintiff, since the termination of her employment with the Port Authority of New York, has

been a teacher in the New York City School System.

Absent consolidation with 72 Civ. 5400, the actions 72 Civ. 5021, 72 Civ. 5136 alleging purely state law claims would have to be dismissed since no diversity of citizenship exists between plaintiff and the defendants. However, even assuming jurisdiction was properly maintainable after consolidation on the theory of pendant jurisdiction, see Kavit v. A.L. Stamm & Co., 491 F. 2d 1176 (2d Cir. 1974), plaintiff is not entitled to relief on the merits.

At the very least the defendants are entitled to a qualified privilege for the statements made in preparing employee evaluations in the course of their official duties. Shapiro v. Health Ins. Plan of Greater N.Y., 7 N.Y.2d 56, 194 N.Y.S.2d 509, 163 N.E.2d 333 (1959).* Since plaintiff has

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* It may well be that defendant's privi-

failed to introduce any evidence tending to show malice on the part of the defendants in making their allegedly libelous statements, much less sufficient evidence to sustain her burden of proof as to this issue plaintiff cannot recover on her libel claims. In order to destroy a qualified privilege plaintiff must show that the statements were motivated by actual malice on the part of defendants. Shapiro v. Health Ins. Plan of Greater N.Y., supra.

As to action 5400, as plaintiff's proof on her behalf revealed, plaintiff was in

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lege is absolute, given that the alleged libel occurred in the course of public officials' evaluations performed as part of their official duties in serving the public. See Sheridan v. Crisona, 14 N.Y. 2d 108, 249 N.Y.S.2d 161 (1964); Lawrence Univ. v. State, 41 A.D.2d 463, 344 N.Y.S. 2d 183 (3d Dep't 1973).

receipt of the two memoranda which were the basis for the recommendation of her termination. She was granted a review before a non-involved department head at which she was represented by counsel. That hearing was postponed once in order that counsel could (and did) send a lengthy written presentattion of plaintiff's position. During the course of the hearing, plaintiff and her attorney succeeded in persuading the Authority to continue her employment at the identical salary albeit in another position. Plaintiff was also offered professional counselling to correct "peaks" and "valleys" in her job performance. She refused this offer and insisted that she be reinstated to the very position of Assistant to the Director of the World Trade Institute Alternatively, plaintiff proposed she be reinstated on a "leave of absence" basis for six months after which she would resign. This would in some way, she believed, be of

assistance to her in vesting her pension. This latter proposal was not feasible and in any event, would not have accomplished what the plaintiff wished of it.

I conclude from the plaintiff's own testimony in support of her allegations, that there was an appropriate hearing upon her termination (see Board of Regents v. Roth, 408 U.S. 564, at fn. 8 on page 570). This is particularly so in this case where at the close of the hearing plaintiff, successful, was offered another job at the same pay thus annulling the termination. That she declined this was her determination.

This Court could not in any event compel Director Zwick to have a person with whose services he was dissatisfied as his assistant. Plaintiff obviously had received all she could hope for in the offer of another job at the identical salary. There was no claim on the trial before me that the other

job plaintiff was offered was in any way demeaning or beneath plaintiff's dignity.

Given the foregoing, I conclude that as a matter of law, plaintiff has failed to demonstrate that she was denied the Constitutional hearing to which she was entitled. Given the foregoing, I dismiss complaint 72 Civ. 5400.

Plaintiff's said three complaints, consolidated for purposes of trial, be and the same hereby are dismissed.

The foregoing is so ordered.